No. 9073

# United States Circuit Court of Appeals

## FOR THE NINTH CIRCUIT

PUGET SOUND NAVIGATION COMPANY,
a Corporation,

*Appellant,*

—*vs.*—

UNITED STATES OF AMERICA,

*Appellee.*

Upon Appeal from the United States District Court
For the Western District of Washington
Northern Division

HONORABLE JOHN C. BOWEN, *Judge*

# BRIEF OF APPELLEE


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DEARBORN PRINTING CO., SEATTLE 6-21-39-45

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## BRIEF OF APPELLEE

### STATEMENT OF THE CASE

This action was instituted by the United States against the appellant to recover payment for overtime services rendered by the inspectors and employees of the Immigration Service under the provisions of the act as set forth in the brief of the appellant. There is no dispute between the parties as to the amount involved or for the services rendered by the Immigration Service. The sole question is whether the statute referred to in the appellant's brief is applicable to the situation.

The vessels of appellant serve various ports in the waters generally known as the Strait of Juan de Fuca, Admiralty Inlet, Puget Sound and Haro Strait. The cities served by the steamships of the appellant are Seattle, Port Townsend, Bellingham, Port Angeles and Anacortes, located within the United States of America, and the City of Victoria and the City of Sidney located on Vancouver Island, in the Province of British Columbia, Canada. Other smaller towns are also served by appllant's vessels.

The City of Victoria and the City of Sidney and the City of Port Angeles are surrounded by waters known as the high seas, and all of the trips made by appellant's vessels from the various ports of the United States to Victoria and Sidney travel a portion of the high seas. All of the vessels of the appellant were authorized to and did carry passengers and general merchandise in its operations. The appellant denied liability solely on the ground that it was an international ferry.

The case was submitted to the District Court on an agreed statement of facts, and the court held that the vessels involved were not "international ferries", and we agree with the appellant that the only question presented is whether the vessels are "international ferries."

If the vessels of the appellant are engaged in the transportation of passengers and general merchandise, it is apparent that the claim of the government should be sustained. It is the contention of the appellee that the steamers in the service of the appellant constitute a regular passenger and freight steamship service and is in no sense a ferry service. We shall endeavor to answer the argument presented by the appellant in the order in which it is presented by them.

## THE VESSELS, AND EACH OF THEM, ARE NOT INTERNATIONAL FERRIES.

Judge Bowen in his memorandum selected a number of authorities which define ferries in Tr. 41, 42, 43 and 44, and we respectfully add the following:

> "A ferry necessarily implies transportation for a short distance, almost invariably between two points only, and unrelated to other transportation." *Port Richmond Ferry Co. v. Freeholders of Hudson County*, 234 U.S. 317.
>
> "Legally considered, a ferry is nothing more than the continuation of a road; and as far as regards the authority of a State, it does not differ from a toll bridge." *Gilman v. Philadelphia*, 70 U.S. 713, 18 L.E. 96.

And the following quotation from the State of Washington Supreme Court has a particular importance in view of the fact that appellant operates its vessels under authority of the Washington Legislature and this decision was rendered in a case in which the present appellant was a party:

> "A steamer transporting passengers and freight and operated under a passenger and freight certificate is not a ferry in common and legal parlance." * * *
>
> "A ferry, in a strict technical sense * * * is a combination of the highway from one side of the water over which it passes to the other, and is for the transportation of passengers, or of travelers with their teams and vehicles, and other property as they may carry or have with them. In a strictly ferry business, property is always transported only with the owner or custodian thereof; and ferrymen who do nothing but a ferry business, and have nothing but a ferry franchise are bound to transport no other property; * * * But they may combine, and usually do combine, with the ferry business, the business of a common carrier, carrying freight and merchandise without the presence of the owner or custodian like carriers engaged in the transportation of such freight; * * * As ferrymen they are under a public duty to transport with suitable care and diligence all persons with or without their vehicles and other property, and as common carriers, it is their duty to carry all freight and merchandise delivered to them. *Mayor, etc. of New York v. Starin,* 106 N.Y. 11, 12 N.E. 631." *Puget Sound Navigation Co. v. Department of Public Works,* 156 Wash. 377, 287 Pac. 52.

A further definition of interest in this connection is the statement by the Virginia court as follows:

> "A ferry is nothing but a continuance of the road." * * * "A movable portion of the highway." * * * "A continuance of the highway from one side of the water over which it passes to the other." * * * *State Highway Commissioner v. Yorktown Ice & Storage Co.*, 147 S.E. 239.

## PURPOSE OF THE STATUTE

Counsel has quoted some excerpts from the debate when the bill was under consideration by the Congress. The appellant's attempt to confine the statute to ocean going steamers is answered by the fact that the court, in the Canadian Pacific case, 73 Fed. (2d) 831, applied it to steamers plying in waters of Puget Sound which have been designated as the *high seas* and the vessels of appellant in this case are traversing the same waters and plying the *high seas*. In the same debates there appear the following further quotations:

> "Mr. Crampton: 'But what about international ferries? They run regularly; it is not an emergency but it is a regular thing'."
> "Mr. Greenwood: 'The point I am making is that these interests do not have to accept the service unless they want it. If they petition for it then it will be given to them and they will pay for the service'."

On page 10321, of the Congressional Record, there is found this statement:

> "Mr. Jenkins: 'There is no just reason why an immigration inspector should be required to work, or give six hours overtime without compensation than any other employee of the government. The steamship companies request the services of these inspectors for the benefit of the steamship companies, and why should they not pay for the special service?' "

And further, the report of the Senate Committee, No. 1720, 71st Congress, 3rd Session:

> "It has been reported to the Committee that the object of providing overtime compensation is not only to reimburse the immigration inspectors * * * but to reduce to the minimum the occasion for overtime duty, by furnishing an incentive to steamship companies to arrange their schedules of arrivals so that inspection may be conducted in the usual daylight hours as far as possible.
> * * * *
> "It is the opinion of the committee that the present bill is justified by the principle that the transportation companies should reimburse the government for special services at unusual hours that advance their own interests."

The original opinions of some of the members of the House Committee as set forth by the Navigation Company were apparently cast aside by the House and Senate when the bill was made a law in its present form.

On this point we quote from *Pennsylvania Railroad Company v. International Coal Mining Company*, 230 U.S. 184, 33 Sup. Ct. p. 896:

> "The fact that this provision measuring the amount of recovery by rebate was omitted from the act, as finally reported to both Houses and passed, is not only significant, but so conclusive against the contention of the plaintiff that it quotes—not the report of the conference committee—but a statement, made by a member of the Senate conference committee, to support the present argument that No. 8 means the same thing as

> the omitted clause. But while they may be looked at to explain doubtful expressions, not even formal reports—much less the language of a member of a committee—can be resorted to for the purpose of construing a statute contrary to its plain terms, or to make identical that which is radically different."

The Congress *excluded* the waters of the Great Lakes from the Act. If the Congress had desired to exempt Puget Sound waters it could have done so. The omission to exempt indicates it intended to include it.

## CHARACTER OF THE SERVICE RENDERED

We adopt the divisions of the appellant's brief and set forth the following in answer:

(a) Routes.

To answer the contention of the appellant in regard to routes, we need only turn again to schedules of the vessel, (Tr. 15-19) and Exhibit 51, (Tr. 20) which show the various routes and areas served by the vessels of the appellant, to see that they parallel the highways in nearly every instance, and it is difficult to understand the contention that they do not. Routes of vessels do not parallel highways except Port Townsend to Port Angeles. There is no highway from Anacortes to the Islands en route to Sidney and there is no highway from any of the ports in the United States to Vancouver Island. Every seaport is necessarily the

end of the highway but the various routes of the appellant's vessels cross and recross the waters of Puget Sound in its passenger and freight service. Exhibit 51 conclusively demonstrates this.

(b) The length of the run.

Again we suggest that Exhibit 51 be examined with the schedules to demonstrate that the vessels of the appellant traverse the high seas with various stops at way points en route and this in itself evidences the fallacy of the "ferry" argument.

(c) Vessels used.

The description set forth in the appellant's briefs omits many important features of the vessel of the appellant. To avoid burdening the court with a description of the vessels herein, we respectfully refer the court to Tr. 21-25, which describes the vessels and places where they were built, and it further shows that some of these vessels have traveled the waters of the Pacific and Atlantic Oceans and that the reconstruction made after their arrival in Puget Sound was done solely to facilitate the business needs of the appellant and not to destroy their original purpose.

(d) and (e) Franchise and the Intrastate Extensions.

Counsel seems to find comfort in the fact that the United States law does not require a franchise to operate a ferry on international routes. We may state that the law does not require a franchise for ocean going vessels to operate. In *Nearhoff v. Department of Public Works*, 134 Wash. 677, 236 Pac. 288, it was held that the right to establish and maintain a ferry is a franchise which cannot be exercised without the consent of the state.

The United States has never assumed jurisdiction over the operation of ferries and the jurisdiction of the State of Washington in international affairs is limited. Intercourse between the United States and Canada is regulated by the Jay and other treaties, long established customs, and reciprocal agreements with respect to rules of navigation, fisheries, radio, and other subjects, having the force of law. The appellant applied to the State of Washington for various franchises to operate vessels between ports in the State of Washington and from certain ports in the State o of Washington to Sidney and Victoria, British Columbia, and the State of Washington, pursuant to statutory authority, granted the franchises for operation between intrastate ports, and under its common law or implied right extended the franchises to include Victoria and Sidney. Without the franchises the appellant had no authority to oper-

ate the vessels from the initial ports to the last way port before proceeding to Canada. Even if the State of Washington was without *de jure* authority to extend the franchises to Victoria and Sidney all of the vessels were operated in the State of Washington under franchises other than for "ferries."

Exhibits 79 to 84, inclusive (St. Par. 19, Tr. p. 32) are copies of franchises issued by the State of Washington, under authority of Section 10361-1 of Remington's Revised Statutes. They authorized the appellant to operate vessels between certain ports within the State and between certain ports in the State and the cities of Victoria and Sidney, British Columbia, Canada, over the routes and during the period subject to this action. The said Certificates or Franchises authorize PASSENGER AND FREIGHT SERVICE, and combined PASSENGER, FREIGHT and FERRY SERVICE. The appellant had no authority to operate any of the vessels solely as a ferry and makes no claim of having had a Certificate to do so. The evidence shows that the vessels were operated by law and in fact as freight and passenger carriers, and what ferry business was done, if any, was merely incidental.

As said in *Mayor of New York v. Starin*, 106 N.Y. 11, 12 N.E. 631, restated in *County of St. Clair v. Interstate Car Transfer Co.*, 192 U.S. 454, 24 Sup. Ct. 304:

> "But they may combine, and usually do combine, with the ferry business, the business of a common carrier, carrying freight and merchandise without the presence of the owner or custodian like carriers engaged in the transportation of such freight; * * * As Ferrymen they are under a public duty to transport with suitable care and diligence all persons with or without their vehicles and other property, and as common carriers, it is their duty to carry all freight and merchandise delivered to them."

> 46 U.S.C. 801 "TERMS DEFINED.—When used in this chapter. The term "common carrier by water in foreign commerce" means a common carrier, except ferryboats running on regular routes, engaged in the transportation by water of passengers or property between the United States or any of its Districts, Territories or possessions and a foreign country."

The federal government exercises jurisdiction over the safety requirements of all steam vessels operating on the navigable waters of the United States, including rules of navigation, qualifications of officers and members of crews; registration, entry and clearance when operating between the United States and a foreign country. 33 and 46 U.S.C. However, the actual operation of ferries for hire is within the exclusive jurisdiction of the States.

> "There has been now nearly three-quarters of a century of practical interpretation of the Constitution. During all that time, as before the Constitution had its birth, the states have exercised the power to establish and regulate ferries; Con-

gress never." *Port Richmond v. Board of Freeholders*, 234 U.S. 317, 34 Sup. Ct. p. 823. (1914)

"Internal commerce must be that which is wholly carried on within the limits of a state; as where the commencement, progress and termination of the voyage are wholly confined to the territory of the state. This branch of power includes a vast range of state legislation, such as turnpike roads, toll bridges, exclusive rights to run stage, wagons, auction licenses, licenses to retailers, and to hawkers and peddlers, ferries over navigable rivers and lakes, and all exclusive rights to carry goods and passengers, by land or water. All such laws must necessarily affect, to a great extent, the foreign trade and that between the states, as well as the trade among the citizens of the same state. But, although these laws do thus affect trade and commerce with other states, Congress cannot interfere, as its power does not reach the regulation of internal trade, which resides exclusively in the states." *County of St. Clair v. Interstate Car Transfer Co.*, 192 U.S. 454, 24 Sup. Ct. p. 301. See *New York Central Ry. v. Board of Freeholders*, 227 U.S. 248, 33 Sup. Ct. 269; *Mayor of Vidalia v. McNeely*, 274 U.S. 676, 47 Sup. Ct. 821.

Remington's Revised Statutes of Washington, Section 10361-1, provide for regulation of steamboat companies—certificates of public convenience and necessity:

"No steamboat company shall hereafter operate any vessel or ferry for the public use for hire between termini or over a regular route upon the waters within this state, including the rivers and lakes and Puget Sound, without first applying for and obtaining from the Department of Public Works a certificate declaring that public convenience and necessity require such operation." (Laws of 1927, p. 383, No. 1.)

Franchises are called Certificates of Necessity in the State of Washington and in this connection we ask the Court to examine Exhibits 79 to 84, the Certificates under which the appellant operates. It is not a "ferry service" that is authorized, but a "Passenger and Freight Service," and "Passenger, Freight and Ferry Service." It may be noted that the Certificates of Necessity do not provide for limited "ferry service" to British Columbia, but do provide for "passenger and freight service," and "passenger, freight and ferry service." In this particular, it will be noted that the combined passenger, freight and ferry service is confined in the Certificates of Necessity to points within the waters of Puget Sound and across the Strait of Juan de Fuca, classified as the high seas, to British Columbia. Exhibits 79 to 84 are, therefore, franchises for all types of service which can be rendered by any steamship in the world.

Exhibit 96 (Tr. 35), which is a description of the Princess liners and found to be subject to the Act in the Canadian Pacific case, indicates that a small amount of freight, automobiles and passengers was carried. How, then, can the appellant distinguish this case from the Canadian Pacific case?

TRANSPORTATION OF MERCHANDISE.

Counsel in a labored attempt to avoid the effect of

transportation of merchandise has attempted to indicate that the vessels were confined largely to hand baggage and personal equipment of the passengers. For a complete answer to this we refer the court to Exhibit 85, which is the tariff schedule issued by the appellant, for use on the routes involved.

This is a book containing twenty pages of rates. Therein the appellant sets forth in detail the rates on freight items which range from asphaltum, tar, pitch, cement, lime, plaster, crushed rock, stucco sand, clam shells, farm tractor, lumber, petroleum products, live-stock, sulphite of alumina, concrete, lath, iron and steel tanks, terra cotta, billiard tables. and cables, to fruit and vegetable produce and logs. It is a complete encyclopedia of freight rates—twenty pages of listed items of nearly everything that possibly can be transported for the needs of man. Then the appellant, in the same exhibit, provides for minimum rates on each item. At random, we find that in order to ship junk on the vessels of the defendant, it is necessary to pay the freight rate on a minimum of 10,000 lbs. of junk; a minimum of 45 cans of cream, a minimum of 50,000 lbs. of canned goods and fish oil; and, in order to make the matter clear to the shipper, the company has established five classes of merchandise and rates, together with what they denominate as an "A" and "B" class.

In the same document, the company protects itself under the heading of "heavy lifts," of single parcels from 1,000 to 15,000 lbs. For their further protection, they add: "Pieces weighing over 15,000 lbs. a special arrangement." In the same tariff schedule, the list of standard lumber weights on Douglas Fir, West Coast Hemlock, and Western Dry Cedar, is set forth, indicating the substantial business transacted in the largest industry of the State. Information for the shipper concerning freight matters is set out on page 3 of the Exhibit. with the following pertinent paragraph:

> "Any article rated higher than 4th Class, and not otherwise specifically rated, when shipped in quantities of *five tons or more*, on one bill of lading from one consignor to one consignee, will take the rating of the next lower class."

We refer the Court to page 7 of the Exhibit for a quotation of rates to the various points, including Victoria, B.C., as subject of the tariff.

The appellant on the trial of the case stipulated with appellee as follows:

> "* * * Vessels involved in this action carry passengers, vehicles, baggage, mail, merchandise and freight, issuing bills of lading for such merchandise and freight, and in transporting such merchandise and freight rates were charged between all ports and way ports to shippers delivering the merchandise and freight for shipment." (Tr. 26)

Is this a ferry business? We can well say that Exhibit 85 could be used by any trans-oceanic steamer for its tariff schedule, with only a change in the rates to provide for the increased distance. All other items are covered and subject to tariff. Carrying crushed rock or fish oil, with a minimum of 50,000 lbs., would be quite difficult for ferry service. In fact, if the logic of counsel's argument is carried to a conclusion, the ships that sail the Seven Seas making a direct passage, would, in fact, be ferries, because the only distinction in his argument is that the distance is shorter. Truly, a more telling argument might be made on behalf of ocean going ships, for at least such vessels do not parallel the highway, but are a "continuation" of it.

It is interesting to consider the appellant's position in this case. It openly competes with the Canadian Pacific vessels in trips to Victoria, but it insists that such is a ferry service. In such competition it offers similar accommodations, overnight voyages to Victoria, daylight rides on Puget Sound. Berths, steward and dining services are made available to passengers. Every modern convenience is afforded. In addition, the vessels of the appellant transport freight from port to port and its service completely fits the picture of a modern steamship. If this is a ferry service, any

ship which leaves Seattle for any port, foreign or domestic, is a ferry.

If we consider that a ferry is only a continuation of a highway for a short distance in a direct line, any deviation from the course to various points enroute indicates the same service as is rendered by every ship that travels the sea.

The argument relative to the clearance under custom laws set forth in the appellant's brief has no bearing on the question. It refers only to the regulation of the custom laws of the United States and the fact that certain vessels did not clear customs is immaterial. The pertinent statutory provisions of the Custom Laws are as follows:

> 46 U.S.C.A. 91—"Vessels before departure for a foreign country must obtain a clearance from the Customs Service."
>
> 46 U.S.C.A. 110—"Vessels used *exclusively as ferryboats* carrying passengers, baggage, and merchandise, shall not be required to enter and clear * * * but they shall upon arrival in the United States, be required to report such baggage and merchandise to the proper officer of the customs according to law."

If, as counsel argues, some of the provisions of the Custom Statute have been overlooked, it does not follow that because thereof the appellant should be exempted from the provisions of other statutes.

TOLL ASSOCIATED WITH FERRY.

> "Toll is a tribute or custom paid for PASSAGE, NOT FOR CARRIAGE; ALWAYS SOMETHING TAKEN FOR A LIBERTY OR PRIVILEGE, NOT FOR A SERVICE; and such is the common understanding of the word. Nobody supposes that tolls taken by a turnpike or canal company include charges for transportation. * * * ." New York, L. E. & W. Ry. v. Pennsylvania. 158 U.S. 431, 15 Sup. Ct. p. 898. (Italics supplied).

According to the various schedules, Exhibits 1 to 50, inclusive (St. par. 2 Tr. 19, 20), the Navigation Company advertises single and round trip FARES for passengers and automobiles in connection with its International Route. We quote from schedule, Exhibit 4:

> "INTERNATIONAL CIRCUIT TOUR
>
> Car and Driver, $6.00-30-day limit. Extra passengers, lowest combination of local fares.
>
> Seattle to Bremerton; or Edmonds to Port Townsend or Port Ludlow; Port Angeles to Victoria; Victoria to Bellingham or Sidney to Anacortes.
>
> Tour may be started from any of the ports mentioned and may be made in either direction. The Victoria-Port Angeles ferry may be used as an optional route from Victoria in returning only."

Thus, the Navigation Company sells through round trip tickets for transportation of passengers and automobiles, allowing stopover in Canada for thirty days and returning via optional routes. It is plain that this character of business is that of steamships engaged in the transportation of passengers, collecting

FARES, and not that of ferries collecting TOLLS.

A ferry boat plying between Camden and Philadelphia was held not required to furnish seats for all passengers:

> "No circumstances were disclosed that would have justified the jury in finding that a proper degree of care, upon the part of defendant, required it to provide seats sufficient for the accommodation of all the passengers that its boat would safely carry, or of such number of passengers as ordinarily travelled upon it." Burton v. West Jersey Ferry Co. 114 U.S. 475.

"Toll" is distinguished from fares and charges in Sections 5471 and 10350 of Remington's Revised Statutes of Washington, and

> "In commonly accepted sense, a "toll" is a proprietor's charge for the passage over a highway or bridge; or a proprietor's charge for the passage over a highway or bridge, exacted when and as the privilege of passage is exercised. A settled, certain and defined sum exacted for the use of a common passage; a tribute for passage; a tribute or custom paid for passage, or a duty imposed on goods and passengers travelling public roads, bridges, etc.; something imposed at the locality where a passage way is used for special benefit received." 62 C. J. 1078.
>
> "Fare. A rate of charge for the carriage of passengers; a payment that is made when the right of carriage is claimed; all sums received or charged for the hire, fare, or conveyance of passengers upon or along any railway; money paid for a voyage or passage. In common acceptance, when used in relation to common carriers, the term relates to the passengers, and not to freight. The word "compensation" embraces both. When a

> ticket is accepted by the conductor, it becomes a fare, but not before. The word "fare" originally meant "journey," and such is still its connotation." 25 C. J. 670.

## THE OPINION OF JUDGE NETERER

The appellant in its brief, p. 11, quoted statements made by Judge Neterer in *United States v. Canadian Pacific Ry.*, 4 Fed. Supp. 851:

> "The defendant is operating regular ferry lines between Nanaimo and Vancouver; Sidney and Anacortes; Victoria and Port Angeles, but on these ferry routes the conventional open-end type of ferry boats are used.
>
> "The Puget Sound Navigation Company operates an international passenger, etc., ferry service, but its vessels are all built upon the conventional ferry-boat lines, with open end for embarking and debarking automobiles and passengers."

Judge Neterer's obiter decision cannot be persuasive because the appellant was not before the Court and the service of its vessels was not an issue in the trial. However, an examination of the record will disclose that the learned Judge was in error in stating that the Canadian Pacific Ry. operated any vessel between Sidney and Anacortes or between Victoria and Port Angeles. The statement "but its vessels are all built upon the conventional ferryboat lines, with open end for embarking and debarking automobiles and passengers" is also an error of fact. Some of the vessels

of the appellant are without an open end, for instance see photograph of the vessel Tacoma, Exhibit 68 (St. Par. 11, Tr. 26). The detailed schedules, Exhibits 1 to 50 (Tr. 19) advertise some of the vessels of the appellant as ferries and others as passenger and freight steamers. All statements of Judge Neterer concerning vessels of the appellant should be dismissed from consideration here.

## THE REASON FOR THE ACT

The Immigration Overtime Act is effective against inspection of passengers and members of crews arriving in the United States on Sundays, holidays and between the hours of 5:00 P.M. and 8:00 A.M., except those arriving at designated ports of entry by international ferries, bridges, tunnels, aircraft, railroad trains, vessels on the Great Lakes and connecting waterways, when operating on regular schedules. It is evident that Congress intentionally distinguished the foregoing classes from all others, and through appropriations provided funds for the employment of a sufficient number of immigrant inspectors to maintain inspection service along the Canadian Border to meet the needs of the traveling public regardless of day or night, Sundays or holidays. Congress made no appropriation provision for the inspection of passengers under other conditions, such as passengers arriving by vessels of the Navigation Company from Canada via

the high seas on Sundays and holidays and between 5:00 P.M. and 8:00 A.M. Consequently the various immigrant inspectors here concerned were required to work their regular daily shift of eight hours in the performance of their regular duties, independent of their services rendered to the Navigation Company at irregular hours. The inspection of arriving passengers and members of crews is required by the Immigration Act of 1917. (8 U.S.C.A. 151, 152, 153). The object of the Overtime Act is to pay the said inspectors for such services as are rendered outside of their regular duty hours, and on Sundays and holidays.

In *Canadian Pacific Ry. case, supra,* p. 834, the Court said:

> "The Proviso excepts 'vessels on the Great Lakes and connecting waterways.' If the Congress had intended that vessels plying on Puget Sound, engaged in services such as provided by appellant, were to be exempted, it is fair to assume that provision would have been made directly in the act, and not left them to be classified under the uncertain term 'international ferries'."

The Congress of the United States apparently desired to regulate hours to meet modern labor conditions and if the appellant desired to avoid overtime, it could arrange its schedules of arrival of its vessels so as to avoid overtime. Men like to lead normal lives, work normal hours, and have their pleasures and re-

creations at times when other people are enjoying them.

If the appellant company desired, because of its convenience or profit, to arrange its schedules for later hours, it is not too much to ask it to pay for the privilege.

## CONCLUSION

In conclusion, we respectfully submit that the defendant is engaged in a passenger and freight business, competing with the Canadian Pacific Steamship Lines on the high seas and it has, by the character of the service rendered, become subject to the terms of the Act and the judgment should be affirmed.

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